UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,174	02/18/2004	Fred L. Pirkle	TOT7USA	1807

270 7590 07/28/2008

HOWSON AND HOWSON
SUITE 210
501 OFFICE CENTER DRIVE
FT WASHINGTON, PA 19034

EXAMINER	
BECKER, DREW E	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
07/28/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/781,174	PIRKLE ET AL.	
	Examiner	Art Unit	
	Drew E. Becker	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 May 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14 and 22-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14, 22-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/12/08 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-14 and 22-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has not specifically pointed out where the new claim limitations of 5/12/08 are supported by the application.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 24 recites "the supports being having food supporting and fuel supporting areas". It is not clear what is meant by this phrase.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1-14 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blevins as applied above, in view of Wollich [Pat. No. 4,054,778], Maahs [Pat. No. 3,800,123], and Kibourian [Pat. No. 5,168,860].

Blevins teaches a cooking device comprising an enclosure with a food support and solid fuel support (Figure 1, #12, 30, 44), an impeller (Figure 1, #16), a temperature sensor (Figure 1, #58), a thermostatic controller that operates the impeller to maintain a constant temperature (Figure 1, #60; column 2, lines 52-56; column 3, lines 1-4), an electric motor (Figure 1, M), a substantial lack of other openings (Figure 1), and controlling the blower via the conventional manner (column 2, line 56). Blevins does not recite a second temperature sensor for sensing the food's internal temperature, the controller causing the impeller to increase air flow if the temperature drops and

decreasing airflow if the temperature rises, the controller reducing the set point temperature as the sensed internal temperature of the food increases, the controller regulating the rate at which the set point temperature is reduced, first and second manual adjusters, an internal wall with a deflector, and turning the fan on and off. Wollich teaches a cooking device comprising a temperature sensor for sensing the food's internal temperature, the controller reducing the set point temperature at a rate based upon the internal temperature as the sensed internal temperature of the food increases, and first and second manual adjusters (abstract; column 1, lines 30-51; Figure 1, showing manual buttons and switches). It would have been obvious to one of ordinary skill in the art to incorporate the temperature control components of Wollich into the invention of Blevins since both are directed to cooking devices, since Blevins teaches controlling the temperature via any conventional manner (column 2, line 56), since the internal temperature sensing and reduction of temperature of Wollich provided more accurate and precise cooking of the food, and since this temperature control of Wollich provided maximum enzyme action for tenderizing meat as well as preventing additional cooking or bacterial growth (column 1, line 48). Maahs teaches a cooking device comprising a controller which regulates the rate at which the set point temperature is reduced down to a holding temperature by varying the heat output produced by the heat source (column 1, lines 22-31; column 2, line 65 to column 3, line 8). It would have been obvious to one of ordinary skill in the art to incorporate the varying heat rates of Maahs into the invention of Blevins, in view of Wollich, since all are directed to cooking devices, since Blevins already included a thermostat and

temperature sensor (Figure 1, #59-60) as well as controlling the temperature via any conventional manner (column 2, line 56), since Wollich specifically referred to Maahs (column 1, line 9), and since the varied heating rates of Maahs would have provided greater control over cooking, heating, and holding of the food. Kibourian teaches a cooking device with a fan (Figure 2, #61), a controller (column 3, line 61), causing the impeller to increase air flow to create higher temperatures and decreasing airflow for lower temperatures (column 4, line 17), adjusting the airflow by turning the fan on and off (column 4, lines 17-23), and an inner wall with a deflector (Figure 2, #55). It would have been obvious to one of ordinary skill in the art to incorporate the fan control and components of Kibourina into the invention of Blevins, in view of Wollich and Maahs, since all are directed to cooking devices, since Blevins already included a fan controlled in any conventional manner (column 2, line 56), since increasing the airflow to increase the temperature and vice versa was the conventional means for controlling fans as shown by Kibourian (column 4, line 17-23), since turning the fan off and on as taught by Kibourian eliminated the need for more complicated control means, and since the deflector of Kibourian helped ensure that the air reached the fuel before the it could cool the food which was being cooked. Regarding claims 22-24 which recite relationships between various temperatures, these are merely preferred methods of using the claimed apparatus. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Holtkamp [Pat. No. 2,914,644] and Burkett et al [Pat. No. 5,044,262] teach cooking devices with temperature controllers.

Response to Arguments

10. Applicant's arguments with respect to claims1-14 and 22-24 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/
Primary Examiner, Art Unit 1794